

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Chief Bankruptcy Judge  
Sacramento, California

**May 25, 2004 at 9:00 a.m.**

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THE CALENDAR IS DIVIDED INTO THREE PARTS. THE COURT WILL FIRST HEAR CONTESTED MOTIONS AND OBJECTIONS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULES 3007-1(d)(1) OR 9014-1(f)(1). THESE MATTERS, CALENDAR ITEMS 1-31, WILL BE CALLED FOR HEARING BEGINNING AT 9:00 A.M. EACH OF THESE MATTERS HAS A TENTATIVE RULING.

THE NEXT PORTION OF THE CALENDAR, ITEMS 32-40, ARE MOTIONS AND OBJECTIONS NOTICED FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULES 3007-1(d)(2) OR 9014-1(f)(2). THESE ITEMS WILL BE CALLED BY THE COURT BEGINNING NO EARLIER THAN 10:30 A.M. EACH MATTER IN THIS SECOND CALENDAR GROUP IS SET FOR A PRELIMINARY LAW AND MOTION HEARING. IF NO ONE APPEARS TO CONTEST ONE OF THESE MATTERS, THE COURT MAY DISPOSE OF IT. IF THERE IS OPPOSITION, THE COURT WILL SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE RECORD FURTHER. IF THE COURT SETS A FINAL HEARING IN MATTERS 32 THROUGH 40, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE WHICH IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 22, 2004 AT 9:00 A.M. OPPOSITION TO THE MATTER ON CALENDAR MUST BE FILED AND SERVED BY JUNE 8, 2004 AND ANY REPLY MUST BE FILED AND SERVED ON JUNE 15, 2004. THE MOVING PARTY IS TO GIVE NOTICE OF THE CONTINUED HEARING AND THESE DEADLINES.

THE LAST PORTION OF THE CALENDAR, ITEMS 41-135, WILL NOT BE HEARD BY THE COURT. BELOW IS A FINAL RULING FOR EACH OF THE THESE MATTERS. THE "FINAL RULING" WILL BE APPENDED TO THE MINUTES. THE FINAL RULING MAY NOT BE A FINAL ADJUDICATION OF THE MERITS OF A MATTER. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MAY SO ADVISE THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED IN FAVOR OF THE CONTINUANCE OR THE STIPULATION. IF YOU CANNOT SO ADVISE THE COURTROOM DEPUTY CLERK AT THE HEARING, MAKE PROVISION FOR VACATING THE FINAL RULING IN YOUR ORDER.

WITHIN EACH PORTION OF THE CALENDAR, CASES ARE ARRANGED BY THE LAST TWO DIGITS IN THEIR CASE NUMBERS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN THREE DIFFERENT LOCATIONS ON THIS CALENDAR.

IF THE COURT CONCLUDES THAT FED.R.BANKR.P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, ABSENT GOOD CAUSE, IT WILL BE SET FOR HEARING ON JUNE 2, 2004 BEGINNING AT 1:30 P.M. BEFORE JUDGE McMANUS.

THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER.

May 24, 2004 at 9:00 a.m.

- Page 1 -

**Matters called beginning at 9:00 a.m.**

1. 03-33601-A-13L MONICA CHANEY HEARING - DEBTOR'S MOTION TO  
CONFIRM CHAPTER 13 PLAN  
5-10-04 [28]

- ☐ Telephone Appearance  
☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be dismissed.

First, Fed.R.Bankr.P. 2002(b) requires a minimum of 25 days' notice of the deadline for objections to confirmation. The debtor gave 18 days' notice of the hearing. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that 14 days' notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(b) requires a minimum of 25 days of notice of the deadline for objecting to confirmation, and because the debtor gave only 18 days' notice, there has been insufficient notice given of this hearing and the deadline for making objections to the proposed plan.

Second, all matters placed on the calendar must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with a motion.

This motion has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to possibly profit from confusion that the movant has caused.

Third, Local Bankruptcy Rule 9014-1(d)(2) & (3) (effective Dec. 23, 2002) requires a separate notice of hearing which specifies the docket control number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, the courtroom in which the hearing will be held, and whether written opposition must be filed. If written opposition must be filed, the notice of hearing must specify the date it is due, on whom it must be served, and give notice that the failure to file it in a timely manner may result in the motion being resolved without oral argument and the striking of untimely written opposition. The notice given in this case does not explain how parties must oppose the motion.

2. 02-31007-A-13L HEATHER URBAN HEARING - TRUSTEE'S OBJECTION TO  
LJL #1 CLAIM OF COUNTY OF NEVADA ADULT  
& FAMILY SERVICES  
4-7-04 [49]

- ☒ Telephone Appearance  
☒ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained. The objection will be sustained. The last date to file a timely proof of claim was April 1, 2003. The proof of claim was filed on December 12, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is

untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

The debtor asks that the creditor's tardy proof of claim be deemed as timely even though not filed by the deadline set by Fed.R.Bankr.P. 3002(c). The basis for granting retroactive relief from the automatic stay is that the claimant did not receive notice of the petition in time to file a timely proof of claim.

The deadline set by Rule 3002(c) cannot be extended. First, Rule 3002(c) contains five exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here. Second, Fed.R.Bankr.P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that Rule 3002(c) provides no basis for an extension in this case.

The applicability of Rule 3002(c) and not Fed.R.Bankr.P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, then, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

Notwithstanding their plain and unequivocal language, however, the Bankruptcy Rules may not be applied in a way that deprives a party of its constitutional rights. See Reliable Elec. Co., Inc. v. Olson Constr. Co., 726 F.2d 620, 623 (10<sup>th</sup> Cir. 1984); In re Rogowski, 115 B.R. 409, 412-14 (Bankr. D. Conn. 1990). The Fifth Amendment provides that "[n]o person . . . shall . . . be deprived of . . . property, without due process of law. . . ." In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), the Supreme Court held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

It is asserted in this case that because the creditor did not receive notice of the filing of the petition or the deadline for filing proofs of claim in time to file a timely proof of claim that the deadline should be retroactively extended. In this circumstance, it is argued that it would be unfair if the creditor was precluded from filing a claim and participating in the case.

The analysis turns on whether the creditor will be deprived of a property right if it is not allowed to file a proof of claim despite the expiration of the deadline to file a proof of claim. The argument that the creditor will be

deprived of due process is premised upon the contention that if it is not allowed to file a late claim, the debtor's obligation to it will be discharged even though the creditor had no chance to participate in the case. This premise is incorrect.

As to the debtor's discharge of personal liability to the creditor, 11 U.S.C. § 1328(a) provides in relevant part: "*As soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title. . . .*"

The debtor had a duty to accurately schedule or list all debts, In re Barnett, 42 B.R. 254, 256 (Bankr. S.D. N.Y. 1984), and to follow court orders. If the debtor failed to schedule the creditor or to list its correct mailing address, and as a result the creditor did not receive notice of the bar date in time to file a proof of claim, the debtor's plan does not provide for the creditor's claim. In re Harris, 64 B.R. 717, 719 (Bankr. D. Conn. 1986) ("Distributions under Chapter 13 plans are made only to creditors with allowed claims."); In re Van Hierden, 87 B.R. 563, 564 (Bankr. E.D. Wis. 1988). It would require a tortured reading of 11 U.S.C. § 1328(a) to find that where a creditor is deprived of the opportunity to hold an allowed claim by a debtor's negligence, its claim is provided for by a plan. Southtrust Bank of Ala. v. Gamble (In re Gamble), 85 B.R. 150, 152 (Bankr. N.D. Ala. 1988); In re Cash, 51 B.R. 927, 929 (Bankr. N.D. Ala. 1985) ("[I]t would be a strained construction to view the plan as providing for a debt owed to a creditor, when the debtor omits the debt and creditor from the Chapter 13 Statement.").

To discharge a debtor's personal liability for a claim in a chapter 13 case, the plan must provide for that claim. To provide for the claim, the creditor must be given notice so that it has the opportunity to participate in the chapter 13 case and the plan must provide for the creditor's claim. If this did not occur in this case, the claim will not be discharge discharged. This result may warrant the creditor seeking relief from the automatic stay. Cf. In re Lee, 182 B.R. 354 (Bankr. S.D. Ga. 1995); Southtrust Bank of Alabama v. Thomas (In re Thomas), 883 F.2d 991 (11<sup>th</sup> Cir. 1989), *cert. denied*, 497 U.S. 1007 (1990).

Thus, the remedy for the creditor's inability to file a timely proof of claim is not to retroactively extend the deadline for filing claims, but to bar the discharge of the claim.

If this sounds harsh, the debtor is reminded that it is incumbent on the debtor to provide effective notice of the filing of the petition to all creditors. Further, in those instances where notice is deficient, the debtor has one further opportunity to save his or her discharge.

The trustee prepares a Notice of Filed Claims. Nothing in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure requires the trustee to prepare this Notice. The Notice of Filed Claims is a creature of this court's General Order on chapter 13 practice. See General Order 03-03 and its predecessors, General Orders 97-02, 00-02, 01-02 at ¶ 6. The terms of the General Order are incorporated into every chapter 13 plan, including the plan in this case, confirmed by the court.

Once the plan is confirmed, and after all bar dates for filing proofs of claim have expired, the trustee reviews the proofs of claim, compares them to the debtor's schedules, and then summarizes the claims, both scheduled and filed,

in the Notice of Filed Claims. It is then filed and served on the debtor and the debtor's attorney.

If a proof of claim has been filed, the Notice of Filed Claims states the date it was filed, the amount of the claim, the amount scheduled, and the character of the claim (unsecured, priority, or secured). If a proof of claim has not been filed for a scheduled claim, this is also noted in the Notice of Filed Claims.

Suppose a proof of claim was not filed by a secured creditor. The plan requires that a proof of claim be filed before a claim may be paid through the plan. See also In re Osborne, 76 F.3d 306, 308-309 (9<sup>th</sup> Cir. 1996); In re Tomlan, 102 B.R. 790, 791-92 n.1 (E.D. Wash. 1989), *aff'd per curiam*, 907 F.2d 114 (9<sup>th</sup> Cir. 1990). Because a lien will survive the chapter 13 discharge if the debt is not satisfied, a chapter 13 debtor is usually motivated to file a proof of claim on behalf of a secured claim holder. This insures the claim will be paid, ultimately freeing the claim's collateral from the lien. See e.g., Matter of Tarnow, 749 F.2d 464, 465 (7<sup>th</sup> Cir. 1984); In re Bisch, 159 B.R. 546, 549 (B.A.P. 9<sup>th</sup> Cir. 1993). The Notice of Filed Claims informs the debtor when it is necessary to file a claim on behalf of a secured creditor.

A debtor might be similarly motivated to file a claim on behalf of an unsecured creditor whose claim is not dischargeable. Claims for student loans or support are not dischargeable in chapter 13. See 11 U.S.C. § 1328(a). Every dollar paid to a creditor holding such a claim is a dollar the debtor will not have to pay after the conclusion of the chapter 13 case.

It would also behoove a debtor to file a proof of claim on behalf of an unsecured creditor not receiving notice of the bar date. As noted above, such a claim may not be dischargeable.

If the plan fails to provide for a secured or priority claim, the claim will not be paid even if the creditor files a proof of claim. In such cases, in order to comply with sections 1322(a)(2) and 1325(a)(5) and to obtain the broadest possible chapter 13 discharge pursuant to 11 U.S.C. § 1328(a), the debtor will usually wish to modify the plan in order to provide for any omitted secured or priority claim.

Similarly, if the claims are higher than expected, and the plan cannot be completed within its term, the Notice of Filed Claims informs the debtor of the problem in time to object to the claim(s) causing the over-extension, modify the plan, or both. Without this information, the debtor might complete the plan only to discover that he or she had not paid all claims as promised. Because all payments had been completed, the debtor would be unable to modify the plan. See 11 U.S.C. § 1329(a) (a plan may be modified "any time after confirmation of the plan but before the completion of payment. . . ."). And, because all promised dividends were not paid, the debtor would not be entitled to a discharge. See 11 U.S.C. § 1328.

The Notice of Filed Claims, then, alerts the debtor to the possible need to object to a proof of claim, file a proof of claim on behalf of a creditor, move to value the collateral securing a claim, move to avoid a lien pursuant to 11 U.S.C. § 522(f), modify the plan to provide for an omitted claim, or anything else needed to insure that the plan completes within its term, pays the promised dividend to creditors, and satisfies all the requirements of sections 1322 and 1325.

The Notice of Filed Claims in this case was served on June 2, 2003. Thus, the extension of time for the debtor to file claims on behalf of creditors has long since expired.

3. 04-24107-A-13L KEVIN ANGELO

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL, CONVERSION OR  
IMPOSITION OF SANCTIONS  
4-29-04 [7]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The petition shall remain pending on the following conditions.

The debtor failed to file a verified statement of the debtor's social security number either with the petition or within 5 days of its filing as required by Fed.R.Bankr.P. 1007(f). The debtor shall file it within 8 days of the hearing on this order to show cause. If not done, the case will be dismissed without further notice or hearing.

Even if the statement is filed as directed above, because it was not filed with the original deadline, the notice of the meeting convened pursuant to 11 U.S.C. § 341(a) did not include the social security number as required by Fed. R. Bankr. P. 2002(a)(1).

Therefore, no later than June 1, debtor shall serve on the trustee, the United States Trustee, and all creditors the social security statement together with a copy of the order setting the first meeting, notice of continued first meeting date, the standard form proof of claim, and a copy of the proposed plan. These documents shall be served on the United States Trustee, the chapter 13 trustee, and all creditors. Failure to file and serve these documents or to file a proof of service on or before June 4 may result in the dismissal of the petition without further notice or hearing.

4. 04-21616-A-13L DANETTE/CARLOS HANSON  
JMO #1

HEARING - MOTION TO  
CONFIRM AMENDED CHAPTER 13  
PLAN AND VALUE COLLATERAL OF  
KEY POINT CREDIT UNION, ET AL.  
4-7-04 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to commence making plan payments. A minimum of \$566 has not been paid. The plan does not comply with 11 U.S.C. § 1325(a)(6).

A valuation motion is a contested matter and it must be served like a summons and a complaint. See Fed.R.Bankr.P. 9014 incorporating by reference Fed.R.Bankr.P. 7004. Service of the motion did not comply with Fed.R.Bankr.P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion

as to Keypoint Credit Union was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), \_\_\_ B.R. \_\_\_, 2004 DAR 4443 (BAP 9<sup>th</sup> Cir. 2004) (service in accordance with Fed.R.Bankr.P. 2002(b) does not satisfy the service requirements of Fed.R.Bankr.P. 7004(b)).

As to the other valuation motions, the court makes no ruling. If the court is persuaded to confirm the plan, it will address the other valuation motions.

5. 04-20419-A-13L RICARDO LOPEZ HEARING - MOTION TO  
JRH #1 CONFIRM FIRST AMENDED PLAN  
4-16-04 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,488. The plan does not comply with 11 U.S.C. § 1325(a) (6).

Second, the plan does not comply with 11 U.S.C. § 1325(a) (4) because unsecured creditors would receive \$2,000 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

Third, the plan does not commit all disposable income for a minimum of 36 months even though unsecured creditors will not be paid in full. Given the objection of the trustee, this violates 11 U.S.C. § 1325(b).

6. 03-23524-A-13L WILLIAM/SANDRA GIRARD CONT. HEARING - MOTION FOR  
JMO #1 RELIEF FROM AUTOMATIC STAY  
YOLO FEDERAL CREDIT UNION, VS. 4-7-04 [58]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted pursuant to 11 U.S.C. § 362(d) (1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The contract with the movant and the plan require the debtor to insure the vehicle. The insurance must include comprehensive and collision coverages with deductibles of no more than \$500. The failure to have this insurance and to provide evidence of it is cause to terminate the automatic stay pursuant to 11 U.S.C. § 362(d) (1). The movant's interest in its collateral is not being adequately protected by the debtor.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a) (3) is ordered waived.

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be dismissed.

The motion argues that the petition must be dismissed pursuant to 11 U.S.C. § 109(g) because the debtor filed two prior cases.

However, a review of the docket of the last petition filed, Case No. 02-31648, reveals that it was converted to chapter 7 and the debtor received a discharge. There is nothing on that docket or in the motion that convinces the court that the debtor willfully failed to prosecute that case or disobeyed a court order. It may be that the debtor failed to make payments to the movant on its secured claim in breach of its plan, but the debtor's conversion to chapter 7 was an appropriate response to the debtor's inability to confirm a plan. Section 109(g)(1) does not require dismissal of the petition.

Nor does section 109(g)(2) require dismissal. A review of the docket for the prior case reveals that no creditor moved for relief from the automatic stay and the petition was not voluntarily dismissed by the debtor.

Even though the first case was filed in 2000 and dismissed on June 4, 2002 (hence this petition was not filed within 180-days of the dismissal), the court has also examined the docket of the first case. It shows only that the debtor was unable to consummate a confirmed chapter 13 plan.

Of course, this petition could nonetheless be dismissed if it and the plan were filed and proposed in "bad faith."

However, the court has confirmed a plan. This motion was not filed until after the plan was confirmed. In order to confirm the plan, the court had to conclude that the plan had been proposed in good faith. It was entitled to presume good faith in the absence of an objection to the debtor's bona fides. See Fed.R.Bankr.P. 3015(f) ("If no objection is timely filed, the court may determine that the plan has been proposed in good faith . . . without receiving evidence on such issues." No such objection (or dismissal motion) was filed prior to confirmation on March 24, 2004.

In other words, the fact that the debtor filed earlier unsuccessful chapter 13 petitions should have been raised as part of "bad faith" objection to confirmation. It was not raised and the court cannot permit it to be raised at this late date. Indeed, collateral estoppel and the law of the case doctrine preclude the movant from doing so.

Furthermore, bad faith has not been shown. The record shows only that the debtor was previously unable to consummate a plan, then followed a first chapter 13 petition with a second petition that was soon voluntarily converted to chapter 7. With discharge in hand, this case was filed. Shedding all dischargeable unsecured debt may increase the chances of success. Cf. Matter of Metz, 820 F.2d 1495 (9<sup>th</sup> Cir. 1987) (A debtor may file a Chapter 13 after receiving a Chapter 7 discharge. Successive filings do not constitute bad faith per se, and that the filings must be examined together and the result achieved by such filings and reviewed against the statutory requirements of the



Bankruptcy Code. It is permissible for a debtor to file chapter 7 to shed dischargeable debts and then file a chapter 13 petition to reorganize secured debt and/or debts nondischargeable in the chapter 7.). Accord In re Baker, 736 F.2d 481, 482 (8<sup>th</sup> Cir. 1984); In re Gayton, 61 B.R. 612, 614 (BAP 9<sup>th</sup> Cir. 1986).

The court also notes that the trustee reports that the debtor is current with the payments required by the plan.

8. 04-22034-A-13L CINDY GUMPY  
DGN #2  
FORD MOTOR CREDIT CO., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-27-04 [23]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted pursuant to 11 U.S.C. § 362(d)(2) and (d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded.

The subject property, a vehicle, has a value of \$7,000 (if the movant is believed) to \$10,000 (if the debtor's attorney is believed) and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$19,322.66. There is no equity. The debtor has the burden of proving that the vehicle is necessary to her reorganization. See 11 U.S.C. § 362(g)(2). In fact, there is no admissible evidence whatever with the opposition. What is more, examination of the plan reveals that the debtor proposes to sell the vehicle securing the movant's claim and to pay over the sale proceeds to the movant. Given that this will produce nothing for unsecured creditors, this makes no sense, particularly in light of the fact that the plan payments to the trustee are only \$170 a month. After taking into account the trustee's compensation, the \$1,250 due to the debtor's attorney, and the \$41,900 is Class 1 and Class 2 secured debt that will share the \$170 a month (net of administrative claims), virtually nothing will be paid to the movant. Instead, it will be required to two years while the debtor sells her home to pay creditors. This plan is so inadequate vis a vis the movant, that the court concludes that the plan is not in prospect and that it does not adequately preserve the movant's interest in the collateral as required by 11 U.S.C. § 1325(a)(5)(B).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

9. 03-27438-A-13L MIKE BAKER  
DF #2

HEARING - MOTION TO  
CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
4-8-04 [50]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The plan does not commit all disposable income even though unsecured creditors will not be paid in full. Considering the nonfiling spouse's income, the debtor has disposable income of \$1,301.68 according to the debtor's schedules but has proposed a plan payment of \$1,099. Given the objection of the trustee, this violates 11 U.S.C. § 1325(b).

The debtor has not demonstrated the plan's feasibility. He has neither a real estate nor contractor's license. Without these licenses, it is difficult to understand how the debtor will operate his construction company.

Finally, the plan does not comply with 11 U.S.C. § 1325(a)(5) because the plan makes no provision for the debts encumbering the debtor's residence.

10. 03-26839-A-13L LINDA/ROBERT MCDOWELL  
ASW #1  
FAIRBANKS CAPITAL CORP., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-19-04 [38]

- ☒ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied. The motion asserts that the debtor has failed to make \$2,077.71 in post-petition installment payments. However, the opposition establishes that this default has been cured and there is no reply by the movant disputing that cure.

Because the debtor was in default under the terms of the plan when the motion was filed, because the loan documentation contains an attorney's fee provision, and because the movant is an over-secured creditor, fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served on the trustee.

11. 04-21039-A-13L JOHN BIBBINS  
SAC #1

HEARING - MOTION TO  
CONFIRM FIRST AMENDED PLAN  
4-8-04 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,575. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, the stream of plan payments over the proposed term to the creditors as scheduled will yield a dividend to Class 7 unsecured claims of 61% rather than 35%.

12. 01-30746-A-13L WILLIAM/LINDA HEARD HEARING - RESTORED MOTION FOR  
LJB #1 RELIEF FROM AUTOMATIC STAY ETC  
INDYMAC MORTGAGE HOLDINGS, INC., VS. 3-24-04 [48]

- ☒ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** There is a confirmed plan in this case. It requires the debtor to make post-petition installment payments on a long-term debt owed to the movant. The movant's collateral is the debtor's residence. The plan provides for the cure of a pre-petition arrearage owed to the movant.

The secured creditor filed a motion for relief from the automatic stay. The motion asserted that the debtor had breached the obligation to make post-petition installments directly to the movant.

The parties advised the court that they had resolved that motion by stipulation. They have agreed to an adequate protection order.

Their proposed adequate protection order will not be entered because it conflicts with the three guidelines set out below.

1. With one proviso, the court will not approve a stipulated adequate protection order that provides for ex parte relief in the event of a violation of its terms. The court will approve such a stipulation if the breach warranting ex parte termination of the automatic stay consists of the failure to cure an existing post-petition monetary default within 60 days of the entry of the adequate protection order.
2. If it will take a debtor more than 60 days to cure a post-petition default, absent good cause, the default must be cured by modifying the plan to provide for the cure through the trustee.
3. Once a post-petition default has been cured, the adequate protection order must end. If the default has been cured, there is no need for an adequate protection order. Therefore, the court will not enter orders permitting ex parte relief or authorizing the motion for relief from the automatic stay to be restored to calendar if the debtor defaults on some future obligation. A new motion must be filed.

The traditional role of an adequate protection order is to protect a creditor's interest in the debtor's property after the filing of the petition until the confirmation of the plan. Once the plan is confirmed, the plan makes provision for the adequate protection of the claim. There is no need to make provision for payment of a claim outside of the plan once the plan is confirmed. See In re Cason, 190 B.R. 917, 932 (Bankr. N.D. Ala. 1995); In re Johnson, 63 B.R. 550 (Bankr. D. Colo. 1986); In re Moore, 13 B.R. 914 (Bankr. D. Or. 1981). The only post-confirmation role for an adequate protection order is to insure that a relatively minor plan default is cured promptly.

A more onerous adequate protection order that operates after confirmation of the plan amounts to a secret plan modification. That is, other creditors, the trustee, and the United States Trustee know nothing about it and they have no

opportunity to object to it. They may wish to complain if the adequate protection offered to just one creditor is unduly preferential.

Or, if the adequate protection order hobbles the debtor's ability to complete the plan, other parties in interest may wish to be heard. Since most chapter 13 debtors, including this debtor, are in chapter 13 in an effort to save their homes, any secret provision that unnecessarily hinders this effort is a concern to all creditors. If the stay is terminated pursuant to the stipulation, a debtor is likely to dismiss the case or permit the trustee to dismiss it. As a result all other creditors suffer.

The court will not permit one creditor and the debtor to get together and modify the plan without notice to every other party interest even though the modification potentially affects all other creditors. The requirement of Rules 2002(b) and 3015(b), (d), (e), and (g) that the trustee, the United States Trustee, and other creditors be served with the plan or a summary of it is seriously compromised, even negated, if the debtor and one creditor can modify the plan in this fashion.

By permitting the debtor to cure post-petition defaults to secured creditors through an adequate protection order, usually all that is accomplished is that one default is traded for a different default. Generally speaking, all of a debtor's disposable income is devoted to the plan. See 11 U.S.C. § 1325(b). How, then, will the debtor make the plan payment and the ongoing direct payment to the secured creditor as well as the "catch-up" payment required by the adequate protection order? More often than not, the only way to do it, is to stop making the plan payment which then prompts the chapter 13 trustee to request the dismissal of the case.

For these reasons, the court will generally not depart from the three guidelines laid out above absent very good cause. The stipulation offered in this case departed from them without good cause being demonstrated. Specifically, the stipulation will last for the remainder of the case and it permits ex parte relief if the debtor ever misses another payment. The parties may either renegotiate their stipulation or the court will take up the motion.

13. 04-24161-A-13L GEORGE/CINDY HOMER  
SW #1  
GMAC, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
5-4-04 [9]

- ☒ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

14. 03-30249-A-13L WESLEY/JUDITH SPOHN  
M&B #1  
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-19-04 [33]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

Despite the foregoing, the motion will be denied. The motion complained that the debtor had failed to pay three monthly installments through April 2004 directly to the movant on account of its Class 4 claim. However, the supplemental pleading filed on May 10 indicates that the default alleged in the motion has been cured. Therefore, there is no cause to terminate the stay.

Because the debtor was in default under the terms of the plan when the motion was filed, because the loan documentation contains an attorney's fee provision, and because the movant is an over-secured creditor, fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served on the trustee.

15. 03-29547-A-13L DAVID/CLAIRE ATTEBERRY  
LJP #3

CONT. HEARING - MOTION TO  
CONFIRM DEBTORS' AMENDED CHAPTER  
13 PLAN  
4-2-04 [59]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 105 months to complete the plan.

Second, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,700. The plan does not comply with 11 U.S.C. § 1325(a)(6).

16. 03-29547-A-13L DAVID/CLAIRE ATTEBERRY  
LJP #9

HEARING - MOTION TO RETRO-  
ACTIVELY ALLOW DEBTORS' EXTEN-  
SION OF TIME TO FILE SCHEDULE C  
4-27-04 [90]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the objection will be sustained in part.

The objection to notice will be overruled. The notice served informed parties

However, the court agrees that there is no evidence with the motion establishing that the failure to file statements and schedules in a timely fashion was the result of the attorney's excusable neglect. There is no declaration from the attorney or the attorney's staff explaining why the debtor's completed schedules were not timely filed. Without this evidence there is no way to determine whether the reason for the failure is excusable. Giving the court the debtor's declaration explaining that the documents were signed in time to be filed by the deadline is insufficient.

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

Therefore, the pre-petition fees are allowed as a general unsecured claim and the post-petition fees are disallowed.

- Discriminating in favor of nondischargeable claims is generally considered to be unfair. Were the court to permit it, then "nondischargeable" would be equated with "priority." Lawson v. Lackey (In re Lackey), 148 B.R. 626 (Bankr. N.D. Ala. 1992). Further, there is nothing fair, measured from the perspective

19. 03-21164-A-13L DANIEL/EDNA CAMPBELL  
SMR #1  
HERSHEY LAND CO., VS.

☐ Telephone Appearance  
☒ Trustee Agrees with Ruling

No fees and costs are awarded because the movant is not a secured creditor. See 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-19-04 [30]

- ☒ Telephone Appearance
- ☒ Trustee Agrees with Ruling

While opposition has been filed, it admits that the post-petition default has occurred. While the reasons given for that default are sympathetic, they do not permit the court to overlook the fact that the plan has been materially breached. The claim of the movant is secured by the debtor's home. 11 U.S.C. § 1322(b)(2) prevents the debtor from prospectively modifying this claim. What

the debtor cannot do in a plan the debtor can do by simply ignoring the plan and not making mortgage payments directly to the movant as required by the plan.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

21. 02-33269-A-13L VLADIMIR STRUGATSKY HEARING - SECOND MOTION TO  
JAT #3 INNA SOROKA MODIFY CHAPTER 13 PLAN  
4-14-04 [33]

- ☒ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to modify the confirmed plan will be denied and the objections will be sustained in part.

The plan is not feasible whether or not the debtor has the ability to make the monthly plan payment. The stream of payments will not pay the dividends promised by the plan over the term of the plan. It will take 46, not 36 months, to complete the plan. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The objection of U.S. Bank will be overruled. The debtor proposes to cure a post-petition arrearage owed to U.S. Bank. U.S. Bank is secured by a deed of trust encumbering the debtors' residence. The original plan required that the post-petition note installments be paid directly to U.S. Bank. The debtor has failed to pay \$2,850, or the equivalent of three and a half post-petition monthly installments. A plan may be modified to cure a post-petition default on a home mortgage without ruling afoul with 11 U.S.C. § 1322(b)(2). See 11 U.S.C. § 1322(b)(2). In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995); Green Tree Acceptance v. Hoggie (In re Hoggie), 12 F.3d 1008, 1010-11 (11<sup>th</sup> Cir. 1994); Mendoza v. Temple Inland Mortgage (In re Mendoza), 111 F.3d 1264, 1268 (5<sup>th</sup> Cir. 1997).

The objection complains that the debtor intended cure will include half of one installment. Apparently it is difficult for the creditor's accounting system to handle partial installments. Too bad. The post-petition default is what it is.



22. 03-22869-A-13L JON/RITA KINGSBURY  
MWB #5

HEARING - MOTION FOR  
ORDER APPROVING SECOND MOD-  
IFICATION TO CONFIRMED CHAPTER  
13 PLAN  
4-22-04 [61]

- ☒ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to modify the confirmed plan will be denied and the objection will be sustained.

First, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d).

Second, the IRS has filed a priority claim for in excess of \$179,000. The trustee filed the Notice of Filed Claims. The period given in General Order 01-02, ¶ 6 to object to the claim has expired. Neither the confirmed plan nor the proposed plan can accommodate the claim. Therefore, until the debtor successfully objects to the claim, the court will evaluate a proposed plan in light of the IRS's deemed allowed claim. With the claim included, the plan either will not complete within 60 months or it will not pay the claim in full as required by 11 U.S.C. § 1322(a)(2).

23. 03-24469-A-13L RUEBEN BERGET  
WSS #3

HEARING - OBJECTION TO  
CLAIM OF PLACER COUNTY  
TAX COLLECTOR  
4-20-04 [42]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained.

When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c). Further, when a security interest is claimed in the property of the debtor, the proof of claim must be accompanied by evidence of perfection of the security interest. Fed.R.Bankr.P. 3001(d). When these requirements for a proof of claim are satisfied, the proof of claim is entitled to be deemed prima facie evidence of the validity and amount of the claim. Fed.R.Bankr.P. 3001(f). Here, there is no documentation appended to the two proofs of claim filed by the creditor on August 8 and 12, 2003. The face of the proof of claim makes no reference to particular security for the claim. The proof of claim does not explain the absence of documentation, such as copies of the tax assessments, copies of tax liens, etc. At a minimum, the claim is not entitled to be considered prima facie valid as a secured claim.

Further, the evidence with the objection and the response to the objection indicates that the taxes were assessed against a corporation. That corporation is now suspended. And, while the debtor listed the corporate name as a fictitious business name, that listing includes the word "Corp." Thus, absent some evidence that the debtor is personally liable for the taxes, the claim is disallowed as a claim.

24. 03-29776-A-13L TERRY/DIANNE WILLIAMS  
WSS #1

HEARING - MOTION FOR  
CONFIRMATION OF FIRST  
AMENDED PLAN  
4-20-04 [38]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The debtor's unsecured debt exceed \$345,000. This exceeds the limit set by 11 U.S.C. § 109(e). The debtor is not eligible for chapter 13 relief.

The court does not reach the remaining objection based on the making of charitable contributions.

25. 02-23078-A-13L MAURICE/TRUDY KALISKY  
SMR #5

HEARING - OBJECTION TO  
CLAIM OF GSW ASSOCIATES  
4-5-04 [111]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled. The proof of claim demands damages arising out of a breach of a real estate lease. The objection seems to be that the claim demands rent after the point in time the debtor was removed from possession. The prayer of the objection demands that the claim be disallowed in its entirety as a duplicate claim. There are three problems.

First, there is no evidence that the claim is a duplicative claim. The court cannot locate a second proof of claim filed by the creditor that is appended to the objection or referred to with specificity in it.

Second, if the objection is that the debtor is not liable for post-eviction rent, this does not warrant disallowance of the entire claim. The claimant would be entitled, at a minimum, to the pre-eviction rent.

Third, the debtor's eviction does not necessarily end the debtor's liability for post-eviction rent. This will depend on whether the lease was forfeited, whether the property was relet, and whether the claimant mitigated damages. There is no evidence on such issues in the objection.

26. 03-28678-A-13L THOMAS/KATHLEEN SIELINSKI  
JMP #1  
EMC MORTGAGE CORP., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-15-04 [80]

- ☒ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

The plan requires the trustee to make all ongoing post-petition installments. If not paid timely, the required late charge will be paid. To be paid post-petition installments, no proof of claim is necessary and these payments will be made by the trustee prior to plan confirmation. This is the plan required by General Order 03-03, ¶ 5(c).

To insure that the trustee receives accurate information regarding ongoing post-petition installments, the debtor gives the trustee a Class 1 Claim Worksheet. See General Order 03-03, ¶ 3(a), 5(c)(ii). The trustee verifies the information given to him by the trustee on this worksheet. There is no evidence that the debtor failed to cooperate with the trustee in providing the worksheet or that the movant provided information to the trustee that contradicted the information given by the debtor in the worksheet.

The debtor paid the first plan payment due in September 2003. This was passed on to the movant by the trustee on September 30. This was likely received by the movant during the first week of October. Because this was not within the grace period for the September installment, a late charge has accrued. As indicated above, the plan provides for the late charge. The trustee reports that this late charge was paid on November 30.

The debtor made a timely October plan payment. The trustee in turn passed on the mortgage payment to the movant on October 31. This was likely received by the movant in the first week of November.

The debtor made a timely November plan payment. The trustee in turn passed on the mortgage payment to the movant on November 30. This was likely received by the movant in the first week of December.

The debtor made a timely December plan payment. The trustee in turn passed on the mortgage payment to the movant on December 31. This was likely received by the movant in the first week of January.

The debtor made a timely January 2003 plan payment. The trustee in turn passed on the mortgage payment to the movant on January 31. This was likely received by the movant in the first week of February.

The debtor made a timely February plan payment. The trustee in turn passed on the mortgage payment to the movant on February 27. This was likely received by the movant in the first week of March.

No late charges accrued for the period from October 2003 through February 2004. While these payments were received after the 15<sup>th</sup> day of each respective month, the movant received the prior month's payment during the grace period. Under California law, a second late charge cannot be assessed because an installment was received by the mortgage creditor during the grace period for the September installment. This is so even though the installment was credited against the principal and interest due in August. Cal. Civil Code § 2954.4(b) provides:

*"A late charge may not be imposed on any installment which is paid or tendered in full on or before its due date, or within 10 days thereafter, even though an earlier installment or installments, or any late charge thereon, may not have been paid in full when due. For the purpose of determining whether late charges may be imposed, any payment tendered by the borrower shall be applied by the lender to the most recent installment due."*

In other words, if a borrower fails to make one monthly installment but thereafter makes ten monthly installments timely, the lender can assess one late charge, not eleven, even though the principal and interest paid is being applied to an obligation due in the prior month.

The debtor failed to make a plan payment in March and April 2004. Consequently, the trustee was unable to pass through the March and April

mortgage payments to the movant in a timely fashion. This triggered a late charge for these two installments.

However, before this motion was even filed, the trustee moved to dismiss the petition. The court entered an order requiring that the debtor make all delinquent plan payments, including the May payment and the late charges for March and April, by May 25. If not paid timely the petition will be dismissed on the trustee's ex parte application. There is no need, therefore, to enter any relief in connection with this motion.

The court notes that the motion asserts that the mortgage installment amount is \$1,662. However, through the date the petition was filed, the motion indicates that the installment amount was \$1,167.42. There is no explanation for the sudden increase nor is there evidence that the debtor or the trustee was notified of the increase prior to its effectiveness. Absent this evidence, the court will not terminate the stay on the basis that the debtor and the trustee paid only \$1,298 in September and October. This is not to say that difference may not be owed to the movant. The court will not, however, terminate the stay because it is outstanding.

There is no material cause to terminate the stay.

No fees and costs are awarded.

27. 01-26279-A-13L LOWELL/CONNIE STREIKER HEARING - TRUSTEE'S OBJECTION TO  
LJL #1 CLAIM OF LEASEMOBILE CALIFORNIA  
4-6-04 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.

The holder of an unexpired lease does not hold a claim that must be preserved by filing a proof of claim unless and until the debtor rejects the lease. Pending rejection (or assumption) the debtor is required to perform the lease. 11 U.S.C. § 365(d)(10). If the lease is assumed, the pre-petition default must be cured. 11 U.S.C. § 365(b)(1)(A). No proof of claim is necessary in order for the lessor to be paid the pre-petition default. The order approving the assumption of the lease must require the debtor to pay that default. If the lease is rejected, the rejection is a breach of contract that is effective "immediately before the date of the filing of the petition." 11 U.S.C. § 365(g)(1). Because a debtor may not get around to rejecting a lease before the deadline for proofs of claim, the rules provide for an extended bar date for filing a proof of claim for any pre-petition default. Fed.R.Bankr.P. 3002(c)(4) and 3003(c)(3).

In this case, the debtor's confirmed plan of reorganization provided for the assumption of the vehicle lease with the respondent. Thus, no proof of claim was necessary. While the lessor filed one anyway, it was completely unnecessary. There is no requirement that a party to an executory contract file a proof of claim where the debtor has elected to assume that executory contract. Given the assumption of the contract in the plan 1) the debtor must cure or provide adequate assurance of prompt cure of pre-petition default, 2) compensate the lessor for any actual pecuniary loss resulting from the default, and 3) provide adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b)(1). By assuming the contract, the debtor also

The only function of the proof of claim was to inform the trustee how much to pay the respondent in order to effectuate the cure.

HEARING - MOTION TO  
CONFIRM FIRST MODIFIED  
CHAPTER 13 PLAN  
4-9-04 [57]

- Tentative Ruling:** The motion to modify the confirmed plan will be denied and the objection will be sustained.

The court also notes that the debtor's response to the dismissal motion indicates that payments were not previously made because the maker of a promissory note due to the debtor has defaulted on payments. Apparently, then, the debtor's source of plan payments is not earned income. If a debtor's earned income is not sufficient by itself to pay claims in full, there is nothing in 11 U.S.C. § 109(e) that requires a debtor to pay claims only from future disposable income. The debtor may rely on the sale of assets or other types of income to fund a plan. However, these other sources of plan payments may only supplement payments from earned income. The debtor has made only \$100 in payments from earned income.

Not only is the plan not feasible but the debtor is likely not even eligible for chapter 13 relief because he does not have sufficient regular and stable income with which to fund a plan. See 11 U.S.C. § 101(30) & 109(e).

CONT. HEARING - TRUSTEE'S  
MOTION TO DISMISS OR CONVERT  
CASE TO CHAPTER 7  
4-6-04 [53]

- ☒ Telephone Appearance  
☐ Trustee Agrees with Ruling

**Tentative Ruling:** Given the inability of the debtor to perform the confirmed plan (see ruling on Docket Control No. JSO-1), the motion will be granted and the case will be dismissed.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,420. The plan does not comply with 11 U.S.C. § 1325(a) (6).

Second, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d).

Third, the debtor is repaying by a payroll deduction a loan from a retirement plan.

A plan which permits a debtor to repay an obligation secured by a non-income producing or an exempt asset not necessary to the plan sacrifices disposable income which could go to unsecured creditors in order to salvage an asset which will produce nothing for the unsecured creditors. Nor does such an asset provide for the debtor's present support. "Although investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. [Footnote omitted.] Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made." In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). See also, In re Festner, 54 B.R. 532, 533 (Bankr. E.D. N.C. 1985); N.Y. City Emp. Retirement System v. Villarie (In re Villarie), 648 F.2d 810, 812 (2d Cir. 1981); In re Jones, 138 B.R. 536 (Bankr. S.D. 1991). Here the debtors wish to repay a loan secured by a 401k plan even though general unsecured claims are not being paid in full. The court recognizes that the failure to repay this loan will cause adverse tax consequences to the debtors. Any tax liabilities, however, may be paid through a Chapter 13 plan or outside of the plan. 11 U.S.C. section 1305(a).

Although the Ninth Circuit has not ruled on this issue, the Sixth and Third Circuits have held that a debtor cannot repay pension or retirement loans while in a chapter 13. Harshbarger v. Pees (In re Harshbarger), 66 F.3d 775, 777 (6th Cir. 1995); Tierney v. Dehart (In re Tierney), 195 F.3d 177 (3d Cir. 1999). In Tierney, the court held:

"[R]epayment of amounts withdrawn from retirement accounts is not reasonably necessary for a debtor's maintenance or support, requiring that payments be made, if at all, only after satisfaction of all unsecured debts. [Citations omitted.] . . . If the Debtors do not make the proposed payments, the retirement systems will deduct the balance owed from their retirement accounts. The payments, even if classified as debt payments, therefore, will increase their retirement benefits rather than repay the retirement systems or ensure the viability of either pension system. In effect, the payments are contributions to the Debtors' retirement accounts. Voluntary contributions to retirement plans, however, are not reasonably necessary for a debtor's maintenance or support and must be made from disposable income. [Citations omitted.] As one bankruptcy court explained in refusing to confirm a plan that

proposed to make mortgage payments on non-residential property rather than satisfy unsecured creditors, "[a]llthough investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made. In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). Debtors' proposed payments, regardless of their financial prudence, must be understood as being made out of "disposable income" under the terms of their proposed plans."

In re Tierney, 195 F.3d at 180-181. The court agrees with this holding. Therefore, the plan, which does not pay unsecured claims in full, does not comply with 11 U.S.C. § 1325(b).

31. 03-30897-A-13L CHERYL BICKEL  
SDB #1

HEARING - MOTION TO  
MODIFY CHAPTER 13 PLAN  
AFTER CONFIRMATION  
4-20-04 [17]

- ☐ Telephone Appearance
- ☒ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The objection will be overruled. While the plan does not provide for the priority claim of the Montgomerys, a review of that claim reveals that it is not likely to be allowed as a priority claim. It is based on a pre-petition breach of a lease or rental agreement. Such claims are not entitled to priority treatment. However, the confirmation of the plan will be conditioned on the debtor successfully objecting to this claim within 90 days. This condition must be included in the confirmation order.

**Matters called beginning at 10:30 a.m.**

32. 03-26809-A-13L TIMOTHY MORRIS HEARING - MOTION FOR  
JMG #1 RELIEF FROM AUTOMATIC STAY ETC  
BANK OF AMERICA, VS. 5-5-04 [89]

☒ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

33. 04-24018-A-13L LAURA DELACUEVA HEARING - MOTION FOR  
WAJ #1 RELIEF FROM AUTOMATIC STAY  
DEMMON ROCKLIN RANCH PARTNERS, VS. 5-11-04 [17]

☐ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

34. 02-31326-A-13L DEBRA ROSE HEARING - MOTION FOR  
SW #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO FINANCIAL ACCEPTANCE, VS. 5-11-04 [36]

☒ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

35. 03-29336-A-13L BRONWEN BUTLER HEARING - DEBTOR'S OBJECTION TO  
CLAIM OF CENDANT MORTGAGE  
4-16-04 [18]

☐ Telephone Appearance

Because this objection to a proof of claim has been set for hearing on less



than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(d)(1) (effective Dec. 23, 2002), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(d)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

Counsel is reminded that a docket control number must be placed on all documents set for hearing.

36. 03-20057-A-13L BOYD/VICKI ATKIN                      HEARING - OBJECTION TO  
MOH #6    CLAIM OF CAPITAL ONE AUTO FINANCE  
   AND MOTION TO DETERMINE AMOUNT  
   OWING  
   4-23-04    [71]

☒ Telephone Appearance

Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(d)(1) (effective Dec. 23, 2002), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(d)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

37. 03-20057-A-13L BOYD/VICKI ATKIN                      HEARING - OBJECTION TO  
MOH #7    CLAIMS OF BUTTE COUNTY TAX COL-  
   LECTOR AND BUTTE COUNTY CENTRAL  
   COLLECTIONS AND MOTION TO  
   DETERMINE CORRECT AMOUNT OWING  
   4-23-04    [73]

☒ Telephone Appearance

Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(d)(1) (effective Dec. 23, 2002), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(d)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

38. 04-20377-A-13L LOURETTA MENDIOLA  
SW #1  
WELLS FARGO FINANCIAL ACCEPTANCE, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
5-11-04 [22]

☒ Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**THE FINAL RULINGS BEGIN HERE**

39. 01-28902-A-13L BESSIE BARNES HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
ROCKWEST, INC., VS. 4-27-04 [50]

**Final Ruling:** The motion will be dismissed without prejudice.

First, all matters placed on the calendar must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with a motion.

This motion has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to possibly profit from confusion that the movant has caused.

Second, the motion is not accompanied by a separate notice of hearing stating the docket control number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held. Local Bankruptcy Rule 9014-1(d)(2) (effective Dec. 23, 2002). The notice and the motion have been combined.

40. 04-20703-A-13L LAWRENCE/CHARZELL STALLWORTH HEARING - MOTION TO  
PGM #1 VALUE COLLATERAL OF RENT-A-CENTER  
4-22-04 [19]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) will be granted. The respondent's collateral had a value of \$500 on the date the petition was filed. That date is the effective date of the plan. \$500 of its claim is an allowed secured claim. When paid \$500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

41. 01-22504-A-13L DESIDERIO ROSALES AND HEARING - MOTION TO  
WW #4 TERESA GUERRERO CONFIRM THIRD MODIFIED  
CHAPTER 13 PLAN  
4-20-04 [36]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

42.	01-22504-A-13L DESIDERIO ROSALES AND WW #5                      TERESA GUERRERO	HEARING - APPLICATION RE: ADDITIONAL FEES AND EXPENSES IN CHAPTER 13 CASE (\$2,558.24) 4-21-04    [40]
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**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

43.	99-29104-A-13L DAVID/MARIE MARTIN LJL #2	HEARING - TRUSTEE'S OBJECTION TO CLAIM BY WILSHIRE CREDIT CORP. 3-29-04    [83]
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**Final Ruling:** This objection to the proof of claim of Wilshire Credit Corp. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was November 7, 1999. The proof of claim was filed on August 18, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

If the proof of claim amended an earlier timely proof of claim, laches demands that the amendment be disallowed. The fact that the amendment may have come after the bar date does not make an amended claim untimely. Neither the bankruptcy code nor the bankruptcy rules address the amendment of a timely filed proof of claim. Most courts permit amendments even after the expiration of the claims bar date provided that the amendment will not unduly prejudice or delay the administration of the case. "A creditor is permitted to file a proof of claim after the bar date when the proof of claim is an amendment to a timely

filed claim but not when the proof constitutes a separate and distinct claim." In re Osborne, 159 B.R. at 573 (Bankr. C.D. Cal. 1993), *affirmed*, 167 B.R. 698 (B.A.P. 9<sup>th</sup> Cir. 1994), *affirmed*, 76 F.3d 306 (9<sup>th</sup> Cir. 1996) (citing Menck v. Hoffman, 205 F.2d 365, 368 (9<sup>th</sup> Cir. 1953)). However, in this case, the amended proof of claim (if it is one) was filed after the debtor had completed plan payments. This made it impossible for the debtor to amend the plan to provide for the claim. See 11 U.S.C. § 1329. Therefore, to allow the claim would unduly prejudice the debtor.

44. 03-32006-A-13L MICHAEL/PATRICIA LAWSON      HEARING - MOTION TO  
CRR #1      MODIFY CHAPTER 13 PLAN  
AFTER CONFIRMATION  
4-13-04 [19]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted and the objection will be overruled. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. Amended schedules have been filed indicated both that the modified plan is feasible and that all disposable income is being devoted to the plan. See 11 U.S.C. §§ 1325(a) (6) & (b).

45. 02-31007-A-13L HEATHER URBAN      HEARING - MOTION OF  
RPB #3      RAYMOND P. BURTON, JR., ATTORNEY  
FOR DEBTOR, FOR FIRST INTERIM  
ALLOWANCE OF ATTORNEY'S FEES  
AND COSTS (\$2,588.96)  
4-22-04 [58]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

46. 02-32607-A-13L REBECCA PATE      HEARING - TRUSTEE'S OBJECTION TO  
LJL #5      CLAIM OF BANK OF AMERICA  
4-7-04 [61]

**Final Ruling:** This objection to the proof of claim of Bank of America has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was April 8, 2003. The proof of claim was filed on July 28, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

47. 04-22607-A-13L KIMBELRY AYERS  
SW #1
- HEARING - OBJECTION TO  
CONFIRMATION OF PLAN AND COL-  
LATERAL VALUATION MOTION BY GMAC  
4-21-04 [16]

**Final Ruling:** The parties have resolved this matter by stipulation.

48. 04-22708-A-13L TIMOTHY/PAMELA SCULLY  
MB #1  
LEE DODGSON, VS.
- HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY ETC  
4-14-04 [22]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot.

The petition was filed on March 17, 2004 at 11:37 p.m. The foreclosure sale occurred on March 17, 2004 at 4:00 p.m. Thus, the petition came too late to halt the sale. Stated differently, the sale did not violate the automatic stay.

Nonetheless, it would be incumbent on the movant to obtain relief from the automatic stay in order to obtain possession of the property. However, on May 19 the court ordered the petition dismissed pursuant to 11 U.S.C. § 109(g)(1). Therefore, the automatic stay has now expired and there is no impediment to obtaining possession. Further, the dismissal was pursuant to section 109(g)(1) making prospective relief unnecessary. The motion is moot.

49. 03-32310-A-13L NOAH MACKENZIE  
SDB #1
- HEARING - DEBTOR'S MOTION FOR  
ORDER VALUING COLLATERAL OF  
FRANCHISE TAX BOARD  
4-6-04 [23]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) will be granted. The respondent's collateral had a value of \$1,395 on the date the petition was filed. That date is the effective date of the plan. \$1,395 of its

claim is an allowed secured claim. When paid \$1,395 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

50. 03-32310-A-13L NOAH MACKENZIE  
SDB #2

HEARING - MOTION FOR  
ORDER CONFIRMING FIRST AMENDED  
CHAPTER 13 PLAN  
4-6-04 [20]

**Final Ruling:** This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

51. 01-34212-A-13L DAVID/ELEANOR RIOS  
WW #4

HEARING - APPLICATION  
RE: ADDITIONAL FEES AND  
EXPENSES IN CHAPTER 13 CASE  
(\$3,341.00)  
4-20-04 [88]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

52. 04-20712-A-13L KITTY CASE  
MWB #2

HEARING - MOTION FOR  
APPROVAL OF ATTORNEYS FEES  
AND COSTS PAYABLE (\$3,705.00  
FEES; \$287.20 COSTS)  
4-22-04 [35]

**Final Ruling:** The motion will be dismissed without prejudice.

The trustee was served at an incorrect address. His address for service is P.O. Box 1858 not P.O. Box 1828 as indicated on the proof of service.

53. 03-29513-A-13L VONNELL JARRELL  
LJL #2

HEARING - TRUSTEE'S OBJECTION TO  
CLAIM OF BRIDGEPORT FIN'AL, INC.  
FOR ELK GROVE DENTAL CARE  
3-30-04 [28]

**Final Ruling:** This objection to the proof of claim of Bridgeport Financial for Elk Grove Dental Care has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on October 6, 2003. The second proof of claim was filed on October 15, 2003. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

54. 03-28118-A-13L SHAWANNA WARD  
SDB #1

HEARING - MOTION FOR  
ORDER CONFIRMING FIRST AMENDED  
CHAPTER 13 PLAN  
4-2-04 [32]

**Final Ruling:** This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

55. 03-33919-A-13L GORDON/TAMARA CASTRO  
DJC #2

HEARING - MOTION TO  
CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
4-7-04 [39]

**Final Ruling:** This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to



confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

56. 04-20419-A-13L RICARDO LOPEZ  
JRH #2

HEARING - MOTION TO  
VALUE COLLATERAL OF HOUSEHOLD  
AUTOMOTIVE FINANCE CORPORATION  
4-16-04 [26]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) will be granted. The respondent's collateral had a value of \$5,560 on the date the petition was filed. That date is the effective date of the plan. \$5,560 of its claim is an allowed secured claim. When paid \$5,560 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

57. 04-22519-A-13L DAVID/YOLANDA BENSON  
JDL #1

HEARING - OBJECTION TO  
CONFIRMATION OF DEBTORS'  
CHAPTER 13 PLAN BY DOWNEY  
SAVINGS AND LOAN ASSN.  
4-28-04 [18]

**Final Ruling:** The court continues the hearing to July 13, 2004 at 9:00 a.m. so that the objection may be considered with the motion to confirm the modified plan.

58. 03-25720-A-13L JAMES SIMPSON  
WW #4

HEARING - OBJECTION TO  
CLAIM OF AMERICAN EXPRESS TRAVEL  
RELATED SERVICES CO., INC.  
4-7-04 [60]

**Final Ruling:** This objection to the proof of claim of American Express Travel has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The obligation was scheduled as a debt in a prior chapter 7 case. The debtor received a discharge and there is no record that the debt was excepted from that discharge. Nor is there anything in the proof of claim suggesting that the proof of claim is a secured claim. Therefore, it is disallowed as a claim in this case.

59. 03-29520-A-13L EDMUND/ANTIONETTE  
LJL #2 REGELBRUGGE

HEARING - TRUSTEE'S OBJECTION TO  
CLAIM OF G.E. CAPITAL CONSUMER  
CARD CO.  
3-30-04 [75]

**Final Ruling:** This objection to the proof of claim of G.E. Capital Consumer Card has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on October 6, 2003. The second proof of claim was filed on October 20, 2003. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

60. 03-30520-A-13L PLACIDO/ANTONIA SANCHEZ  
SHL #1

HEARING - MOTION FOR  
CONFIRMATION OF SECOND  
AMENDED CHAPTER 13 PLAN  
4-12-04 [37]

**Final Ruling:** This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

61. 04-20323-A-13L JEANNIE/RAYFORD SANDERS  
RR #1

HEARING - MOTION TO  
VALUE COLLATERAL OF CAPITAL  
ONE AUTO FINANCE  
4-19-04 [12]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) will be granted. The respondent's collateral had a value of \$17,790 on the date the petition was filed. That date is the effective date of the plan. \$17,790 of its claim is an allowed secured claim. When paid \$17,790 and subject to the

completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

62. 01-28525-A-13L STEPHEN/MELANIE YOUNG                      HEARING - MOTION FOR  
CRR #3    ADDITIONAL ATTORNEY FEES  
   (\$1,054.50)  
   4-21-04    [56]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

63. 03-27430-A-13L TERRIE KARNES                                      HEARING - MOTION TO  
CRR #1    MODIFY CHAPTER 13 PLAN  
   AFTER CONFIRMATION  
   4-13-04    [19]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

64. 02-30032-A-13L MONICA HERIN                                      HEARING - MOTION TO  
SDB #3    MODIFY CHAPTER 13 PLAN  
   AFTER CONFIRMATION  
   4-12-04    [49]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

65. 03-24934-A-13L CLIFFORD SICKLE  
DLM #2

HEARING - MOTION TO  
MODIFY CHAPTER 13 PLAN  
AFTER CONFIRMATION  
4-15-04 [18]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

66. 04-22034-A-13L CINDY GUMPY  
NLE #1

HEARING - OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
4-16-04 [16]

**Final Ruling:** This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained. The plan either does not comply with 11 U.S.C. § 1322(b)(2) or 11 U.S.C. § 1325(a)(6). The plan requires the trustee to pay the ongoing mortgage payments on Class 1 claims. These payments total \$1,292 each month. However, the debtor will be paying the trustee a total of \$170 for 60 months. It is a mathematical impossibility for this payment stream to pay the ongoing mortgage payments. It goes without saying that it is a further impossibility for the pre-petition arrears on these claims or any other pre-petition claims. So, the plan either is not feasible or the Class 1 claims, which are secured by the debtor's home, are being impermissibly modified in violation of section 1322(b)(2).

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

67. 04-22034-A-13L CINDY GUMPY  
DGN #1

HEARING - OBJECTION TO  
CONFIRMATION OF DEBTOR'S  
PROPOSED CHAPTER 13 PLAN BY  
FORD MOTOR CREDIT COMPANY  
4-22-04 [19]

**Final Ruling:** This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

For the same reasons given in the ruling on Docket Control No. DGN-2, the court denies confirmation of the plan. The debtor has not demonstrated its feasibility (there is no evidence the debtor can sell or refinance her home to pay creditors within 24 months). See 11 U.S.C. § 1325(a)(6). The plan negatively amortizes secured claims and fails to adequately preserve the objecting creditor's interest in its collateral. It does not comply with 11 U.S.C. § 1325(a)(5).

68. 04-20735-A-13L PATRICIA SANDOVAL  
PGM #1

HEARING - MOTION TO  
CONFIRM DEBTOR'S FIRST  
AMENDED PLAN  
4-6-04 [18]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

Given the \$9,459.47 secured claim of Bank of America and the exemptions claimed by the debtor on May 18, 2004, there is no remaining equity in the two vehicles mentioned in the exemption. Therefore, there is no equity that must be distributed to creditors in order to comply with 11 U.S.C. § 1325(a)(4).

The motion will be granted and the objection will be overruled. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

69. 03-27438-A-13L MIKE BAKER  
DNL #2

HEARING - FORMER CHAPTER 7  
TRUSTEE'S MOTION FOR COMPENSATION  
AND REIMBURSEMENT OF EXPENSES  
OF TRUSTEE'S COUNSEL AS AN  
ADMINISTRATIVE EXPENSE  
(\$2,327.50 FEES; \$35.95 EXPENSES)  
5-5-04 [62]

**Final Ruling:** Given that there is no confirmed plan, the court continues the hearing to June 22, 2004 at 9:00 a.m. The court is continuing the hearing because the trustee's compensation will be influenced by what creditors will receive through a chapter 13 plan. See In re Hages, 252 B.R. 789 (Bankr. N.D. Cal. 2000). If the plan is denied confirmation, the court is likely to reconvert the petition to chapter 7 and reassign the petition to its original department. In that event, the fees should be sought in the context of the chapter 7 case by the judge handling the petition. Should the case be

dismissed prior to June 22, 2004, the chapter 13 trustee shall retain all plan payments until further order of the court.

70. 03-27438-A-13L MIKE BAKER  
DNL #3
- HEARING - FORMER CHAPTER 7  
TRUSTEE'S MOTION TO APPROVE COMP-  
ENSATION AND REIMBURSEMENT OF  
EXPENSES AS AN ADMINISTRATIVE  
EXPENSES (\$4,290.00 FEES;  
\$5.38 EXPENSES)  
5-5-04 [58]

**Final Ruling:** Given that there is no confirmed plan, the court continues the hearing to June 22, 2004 at 9:00 a.m. The court is continuing the hearing because the trustee's compensation will be influenced by what creditors because if a plan is confirmed, the court is likely to reconvert the petition to chapter 7 and reassign the petition to its original department. In that event, the fees should be sought in the context of the chapter 7 case by the judge handling the petition. Should the case be dismissed prior to June 22, 2004, the chapter 13 trustee shall retain all plan payments until further order of the court.

71. 03-23840-A-13L WILLIAM HAYES  
AMH #1
- HEARING - MOTION TO  
APPROVE FIRST MODIFIED PLAN  
4-13-04 [16]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

72. 03-33740-A-13L LA DONNA NEWTON  
NLE #1
- HEARING - OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
4-16-04 [30]

**Final Ruling:** The objection will be dismissed without prejudice.

The objection complains that the debtor has not scheduled a hearing to confirm an amended plan. While this objection probably should have been a motion to dismiss the case pursuant to 11 U.S.C. § 1307(c)(1) rather than an objection to confirmation of a plan the debtor had not asked be confirmed, the objection is now moot. There is a hearing on confirmation on June 8, 2004 at 9:00 a.m. Any further objection should be filed anew.

73. 03-29541-A-13L JESUS/HEATHER HERRERA  
JAT #2  
VS. CREDIT BUREAU OF YUBA & SUTTER COUNTIES
- HEARING - MOTION TO  
AVOID THE FIXING OF LIEN  
4-12-04 [33]

**Final Ruling:** This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23,

2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$87,151 as of the date of the petition. The unavoidable liens total \$79,470. The debtor has an available exemption of \$14,851. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

74. 03-32943-A-13L ANDREW BANO  
MFB #2
- HEARING - MOTION OF  
FORMER CHAPTER 7 TRUSTEE FOR  
APPROVAL OF ADMINISTRATIVE CLAIM  
3-1-04 [38]

**Final Ruling:** Since the motion was filed, the court has converted the petition back to chapter 7 and transferred the case to Judge Klein so that it can be administered with a related case already being heard by Judge Klein. Given that the case is once again proceeding under chapter 7, the motion is dismissed without prejudice.

75. 03-32943-A-13L ANDREW BANO HEARING - MOTION FOR  
DGN #1 RELIEF FROM AUTOMATIC STAY  
FORD MOTOR CREDIT CO., VS. 5-11-04 [93]

**Final Ruling:** The court has transferred this case to Judge Klein in Department C. Therefore, the hearing is continued to June 9, 2004 at 9:30 a.m. in Department C. Notice shall be given by the movant.

76. 00-26844-A-13L NINA COLE CONT. HEARING - MOTION OF  
JLB #3 DEBTOR TO MODIFY AND CONFIRM THIRD  
AMENDED CHAPTER 13 PLAN  
2-10-04 [108]

**Final Ruling:** The debtor has continued the hearing to July 13, 2004 at 9:00 a.m.

77. 00-26844-A-13L NINA COLE HEARING - DEBTOR'S OBJECTION TO  
JLB #4 CLAIM OF THE IRS  
2-10-04 [105]

**Final Ruling:** The debtor has continued the hearing to July 13, 2004 at 9:00 a.m.

78. 03-32946-A-13L CANDELARIA ENRIQUEZ HEARING - MOTION FOR  
ASW #1 RELIEF FROM AUTOMATIC STAY  
CITIFINANCIAL MORTGAGE CORPORATION, VS. 4-23-04 [17]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective

Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering real property in which the debtor holds an interest. The plan makes no provision for the movant's secured claim and neither the debtor nor any third party has made five monthly post-petition installments. This is cause to terminate the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

79.	02-33347-A-13L GOLDA COLVIN WW #3	HEARING - MOTION FOR AUTHORIZATION TO INCUR DEBT 4-20-04 [32]
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**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. The loan is necessary to consummation of the second modified plan. Therefore, the motion will be granted subject to the confirmation of the second modified plan.

80.	02-33347-A-13L GOLDA COLVIN WW #4	HEARING - MOTION TO CONFIRM SECOND MODIFIED CHAPTER 13 PLAN 4-20-04 [28]
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**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted in part. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

As to the request for the payment of additional attorney's fees, the motion



will be denied. Fees must be sought in a separate motion that is accompanied by contemporaneous time records. If the case is about to end, the fees may be paid in trust as long as the fees are kept in trust pending the court's order on a fee motion.

81. 03-29547-A-13L DAVID/CLAIRE ATTEBERRY HEARING - MOTION TO  
LJP #6 AVOID LIEN  
VS. EL DORADO COUNTY SOCIAL SERVICES 4-23-04 [73]

**Final Ruling:** This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$136,000. The debtor has an available exemption of \$14,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

82. 03-29547-A-13L DAVID/CLAIRE ATTEBERRY HEARING - MOTION TO  
LJP #7 AVOID LIEN  
VS. PAYLESS CASHWAYS, INC. 4-23-04 [78]

**Final Ruling:** This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$136,000. The debtor has an available exemption of \$14,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

83. 03-29547-A-13L DAVID/CLAIRE ATTEBERRY HEARING - MOTION TO  
LJP #8 AVOID LIEN  
VS. NORTHERN CALIFORNIA COLLECTION SVC. 4-23-04 [83]

**Final Ruling:** This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23,

2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$136,000. The debtor has an available exemption of \$14,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

84. 03-32947-A-13L RENEE MYERS  
RMD #1

HEARING - OBJECTION TO  
CONFIRMATION OF SECOND AMENDED  
CHAPTER 13 PLAN BY AMERICREDIT  
FINANCIAL SERV., INC.  
5-5-04 [41]

**Final Ruling:** The objection will be dismissed without prejudice.

This case was filed after July 1, 2003. Hence, General Order 03-03 is applicable. General Order 03-03, ¶ 3(c) provides:

*"Creditors, as well as the Trustee, may object to the confirmation of the chapter 13 plan and to the granting of any valuation or lien avoidance motion included with the plan. An objection must be filed and served upon the debtor, the debtor's attorney, and the Trustee within 14 days after the conclusion of the creditors' meeting held pursuant to 11 U.S.C. § 341(a). The party filing the objection shall set a hearing on the earliest available court date consistent with giving notice pursuant to Local Bankruptcy Rule 9014-1(f)(1). The objection, and any response to it, shall comply with all requirements of Local Bankruptcy Rule 9014-1 including the requirement that a Docket Control Number be placed on the objection and all documents relating to it. Absent a timely objection and hearing, the court may confirm the chapter 13 plan and grant the motions without a hearing. The court's self-set hearing rules and procedures are available on the court's Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), or at the court's public counters."* [Emphasis added.]

The plan contains similar language advising parties in interest that objections must be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1) requires that motions and objections be set for hearing on at least 28 days of notice and also requires a written response from the respondent 14 days prior to the hearing.

Local Bankruptcy Rule 9014-1(f)(2) permits motions and objections to be set for hearing on as little as 14 days of notice. When this notice is given, respondents are not required to file written opposition prior to the hearing. Opposition may be voiced at the hearing. If there is substantial opposition, the court may set a briefing schedule and a final hearing. If there is no opposition, or if there is opposition but there is no need to develop the written record further the court may resolve the matter at the initial hearing.

The General Order, then, precludes objecting parties from using the alternative notice permitted by Rule 9014-1(f)(2). This is because objections to confirmation tend to be contested. Therefore, in order to avoid delay, the court requires the notice required by Local Bankruptcy Rule 9014-1(f)(1) so that the debtor is required to respond in writing and the dispute can be resolved without the necessity of a continuance.

The General Order is consistent in its requirement that plans be confirmed only pursuant to the notice and procedure laid out in Rule 9014-1(f)(1). Paragraphs 3(a) and 8 of General Order 03-03 require that debtors setting hearings on confirmation of plans, amended plans, and modified plans give notice of the confirmation hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

This objection in this case was set for hearing on less than 22 days of notice. This notice is consistent with Local Bankruptcy Rule 9014-1(f)(2) but General Order 03-03, ¶ 3(c) and the plan required that notice be given pursuant to Local Bankruptcy Rule 9014-1(f)(1). Notice is insufficient.

Even if the General Order had not prohibited the shorter notice allowed by Local Bankruptcy Rule 9014-1(f)(2), the notice given in this case was still deficient because it instructed respondents to file written opposition 14 days prior to the hearing. Written opposition is not required when the minimal notice permitted Local Bankruptcy Rule 9014-1(f)(2) is used.

85.	03-29850-A-13L ANGELA/COLIN FLYNN F&F #3	HEARING - MOTION TO CONFIRM DEBTOR'S FIRST MODIFIED PLAN 4-19-04 [40]
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**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

86.	04-21751-A-13L SHEILA WATKINS PGM #1	HEARING - MOTION TO CONFIRM DEBTOR'S FIRST AMENDED PLAN 4-9-04 [29]
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**Final Ruling:** This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended

plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

87. 04-23152-A-13L GARY JOHNSON HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
5-5-04 [16]

**Final Ruling:** The order to show cause will be discharged because the case has already been dismissed. The dismissal order is pending.

88. 04-22854-A-13L ROBERT/DIANA DANE HEARING - OBJECTION TO  
LJL #1 CONFIRMATION OF PLAN BY TRUSTEE  
4-16-04 [8]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The objection will be dismissed without prejudice. The court ruled on May 19 that the petition would be dismissed. The dismissal order is pending.

89. 03-23656-A-13L JOHN/BRENDA GREEN HEARING - MOTION TO  
SDB #3 MODIFY CHAPTER 13 PLAN  
AFTER CONFIRMATION  
4-12-04 [62]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

90. 03-20057-A-13L BOYD/VICKI ATKIN HEARING - OBJECTION TO CLAIMS  
MOH #5 OF IRS AND MOTION TO DETERMINE  
ACTUAL AMOUNT OWING  
4-23-04 [69]

**Final Ruling:** The objection has been voluntarily dismissed.

91. 04-23160-A-13L MELANIE PARKER HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
5-7-04 [20]

**Final Ruling:** The order to show cause will be discharged because the case has already been dismissed. The dismissal order is pending.

92. 04-21962-A-13L GABI/ANDA PAVAL  
NLE #2

HEARING - OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
4-16-04 [35]

**Final Ruling:** This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6). The debtor's budget has \$900 a month for food, \$100 a month for transportation, and nothing for recreation even though the debtor's household includes 8 children under the age of 12 years of age. These expenses are unrealistically low. Further, the lessor of the debtor's business premises has obtained relief from the automatic stay. This suggests the debtor's business is no longer viable.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

93. 03-29663-A-13L TIMOTHY O'LAUGHLIN  
LJL #1

HEARING - TRUSTEE'S OBJECTION TO  
CLAIM OF WELTMAN, WEINBERG AND  
REIS CO. FOR CIT TECHNOLOGY FIN.  
3-30-04 [37]

**Final Ruling:** This objection to the proof of claim of Weltman, Weinbert, et al., has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was December 31, 2003. The proof of claim was filed on January 26, 2004. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

94. 04-20963-A-13L RONALD/SANDRA FRITZ

HEARING - OBJECTION TO  
CONFIRMATION OF SECOND AMENDED  
CHAPTER 13 PLAN BY MASTER  
FINANCIAL, INC.  
3-17-04 [22]

**Final Ruling:** The objection will be dismissed without prejudice.

First, the objection does not comply with Local Bankruptcy Rule 9014-1 (effective Dec. 23, 2002) because when filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

Second, all matters placed on the calendar must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to an objection are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with an objection.

This objection has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting party to possibly profit from confusion that the objecting party has caused.

Third, the notice of hearing fails to inform the respondents that written opposition must be filed, that it must be filed and served at least 14 days prior to the hearing, and that the failure to file timely written opposition may result in the objection being resolved without oral argument and the striking of untimely written opposition. Local Bankruptcy Rule 9014-1(d)(3) (effective Dec. 23, 2002).

95.	04-20963-A-13L RONALD/SANDRA FRITZ MB #1 COUNTRYWIDE HOME LOANS, INC., VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 4-16-04 [31]
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**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. While the trustee has responded to the motion by indicating that the debtor is in default under the terms of the proposed plan, the debtor has not opposed the motion.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the trustee make post-petition note installments to the movant as well as cure the pre-petition arrearage owed to the movant.

This is the third chapter 13 petition filed by the debtor in quick succession. The first, Case No. 02-31882, was filed on October 24, 2002. It was dismissed on June 9, 2003 without being completed. According to the court's file, the petition was dismissed on the motion of the trustee because the debtor was unable to maintain plan payments to the trustee. Countrywide's claim for pre-petition arrears was \$12,460.29 in this first case.

The second petition, Case No. 03-27421, was filed on July 1, 2003. The second petition was dismissed on February 4, 2004 without being completed. According to the court file, the case was dismissed because the debtor was unable to make plan payments. As in this case, the ongoing mortgage payments were being paid

through the plan. Countrywide's claim for pre-petition arrears was \$22,597.43 in this second case.

The current petition was filed on February 2, 2004, before the prior case was even dismissed.

During this progression of cases, the objecting creditor's pre-petition arrearage has increased to over \$31,000. No progress has been made toward reducing the arrearage on the debtor's home mortgage. In fact it has increased significantly.

This case is not progressing satisfactorily. The debtor's second amended plan requires the debtor to pay to the trustee \$4,096.95 each month. The first plan payment was due in March. From this plan payment, the trustee must pay the ongoing mortgage payment, \$1,394.84, to the movant, as well as a \$601.50 monthly mortgage payment to Master Financial.

The trustee reports that through April 2004 he has received \$4,003 from the debtor. From this, two installments have been paid to Countrywide. However, the plan is not current. The debtor did not make at least one monthly plan payment. Therefore, in order to pay Countrywide two ongoing installments, the trustee was required to take funds to earmarked for other creditors.

The creditor asserts that this petition and the proposed plan have been filed in bad faith. It is incumbent on the debtor to show that he is proceeding in good faith. 11 U.S.C. § 1325(a)(3). While the creditor has made the assertion, the debtor has the burden of coming forward with evidence to show he has acted in good faith. 11 U.S.C. § 362(g)(2); Fed. R. Bankr. P. 3015(f). This requires the debtor to show that the debtor's financial circumstances have changed such that the court can conclude that this petition is likely to be more successful than the last. In re Metz, 820 F.2d 1495, 1497 (9<sup>th</sup> Cir. 1987). The debtor has produced no such evidence. The court concludes that the petition and the plan have been filed in bad faith.

Given the failure of two recent prior cases, the default in this case, and the absence of evidence that this case is likely to be more successful than the prior two cases, the court also concludes that the proposed plan will not be feasible. See 11 U.S.C. § 1325(a)(6).

There is cause to terminate the automatic stay. The court will make this relief effective in any case filed by the debtor for the next 180 days.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

96. 04-20963-A-13L RONALD/SANDRA FRITZ  
MB #2

HEARING - OBJECTION TO  
PROPOSED PLAN AND CONFIRMATION  
THEREOF AND REQUEST FOR DISMISSAL  
BY COUNTRYWIDE HOME LOANS, INC.  
4-16-04 [38]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. While the trustee has responded to the objection and dismissal motion by indicating that the debtor is in default under the terms of the proposed plan, the debtor has not opposed the objection or the dismissal motion.

For the same reason the court terminates the automatic stay, the court sustains the objections pursuant to 11 U.S.C. § 1325(a)(3) and (a)(6) and grants the dismissal motion.

97. 03-33064-A-13L SHERRY HAYES  
LJL #1

HEARING - TRUSTEE'S OBJECTION TO  
CLAIM OF CALIFORNIA BUDGET FINANCE  
3-31-04 [13]

**Final Ruling:** This objection to the proof of claim of California Budget Finance has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The claim is based on a post-dated check from the debtor to the claimant that was dishonored by the debtor's bank prior to the commencement of the case. There is no evidence of a security interest for the claim. It is allowed as a general unsecured claim.

98. 01-25365-A-13L KEVIN CAVANAGH  
MFK #1  
KEARNEY CONSTRUCTION, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-21-04 [95]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The movant wishes to proceed in state court with litigation arising out of a construction contract. The debtor is a defendant or a cross-defendant. The movant agrees to limit any recovery against the debtor from available insurance coverages, if any. The existence of a multi-party construction dispute that can be litigated without ultimate cost to the estate is cause for relief from the automatic stay.

The parties shall bear their own fees and costs in connection with the motion.



99. 01-31565-A-13L FREDERICK/SHARON DANZIGER  
LJL #4

HEARING - TRUSTEE'S OBJECTION TO  
CLAIM OF WORLD SAVINGS BANK  
4-6-04 [82]

**Final Ruling:** This objection to the proof of claim of World Savings Bank has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was February 13, 2002. The proof of claim was filed on March 12, 2004. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

100. 04-23365-A-13L KIMBERLEY/NATHAN HIGA

HEARING - OBJECTION TO  
CONFIRMATION OF DEBTORS'  
CHAPTER 13 PLAN BY NATIONAL  
CITY MORTGAGE COMPANY  
4-28-04 [14]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The objection will be overruled.

The objection that the plan under-estimates the arrears owed on each claim will be overruled. The fact that the plan under-estimates the pre-petition arrears owed to the objecting creditor is not a basis for contending that the plan violates 11 U.S.C. §§ 1322(b)(2) & 1325(a)(5)(B) because the secured claim will not be paid in full. The plan provides: "A timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan . . . The proof of claim, not the plan or the schedules, shall determine the amount and classification of a claim. If a claim is provided for by this plan and a proof of claim is filed, dividends shall be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim." The claim will be paid in full as required by section 1325(a)(5)(B) and the claim is not being modified as prohibited by section 1322(b)(2).

While the size of the claim may impact the ability of the debtor to complete the plan within the proposed term, the court need not take this issue up at this time. First, there is no evidence that the plan will not be completed within its stated term. This will depend on the amount of the other claims which have not yet been filed. As noted by the debtor, at least one other claim was filed for substantially less than anticipated. The differential is approximately enough to cover the increased amount demanded by the creditor. Second, the plan states: " Unless all allowed unsecured claims are paid in full, the plan shall not terminate earlier than the stated term or 36 months, whichever is longer. If necessary to complete this plan, the term shall be

extended up to 6 months, but the plan may not exceed 60 months in length." The stated plan term is 57 months. An additional 3 months of \$4,322 plan payments would accommodate the amounts demanded by the objecting creditor.

Counsel is reminded that all matters placed on the calendar must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c).

101. 04-24065-A-13L DONNA PALMER  
HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL, CONVERSION OR  
IMPOSITION OF SANCTIONS  
4-28-04 [9]

**Final Ruling:** The case shall remain pending and the order to show cause will be discharged. The debtor failed to file a master address list with the petition as required by Local Bankruptcy Rule 1007-1(a). It has since been filed.

102. 03-20366-A-13L SYLVIA BROWN-JOSEPH  
M&B #2  
REAL-TIME RESOLUTIONS INC., VS.  
HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-23-04 [86]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay six monthly post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9<sup>th</sup> Cir. 1985).

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel of record on this motion, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

103. 03-22567-A-13L ANA GARCIA  
CRR #3  
HEARING - MOTION FOR  
ADDITIONAL ATTORNEY FEES  
(\$1,100.00)  
4-20-04 [72]

**Final Ruling:** This compensation motion has been set for hearing on the notice

required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

104. 03-33867-A-13L DEBORAH GOFF  
TJS #1

HEARING - MOTION TO  
CONFIRM MODIFIED PLAN  
4-6-04 [34]

**Final Ruling:** This motion to confirm an amended plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

105. 02-23768-A-13L OTIS JACKSON  
04-2041  
OTIS JACKSON, VS.

HEARING - MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT  
FOR FAILURE TO STATE A CLAIM  
UPON WHICH RELIEF MAY BE GRANTED  
OR IN THE ALTERNATIVE, MOTION  
FOR A MORE DEFINITE STATEMENT  
4-22-04 [24]

WELLS FARGO HOME MORTGAGE, ET AL.

**Final Ruling:** The motion was voluntarily dismissed.

106. 02-23768-A-13L OTIS JACKSON  
04-2041 RPR #1  
OTIS JACKSON, VS.

HEARING - MOTION TO  
DISMISS FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF CAN BE  
BE GRANTED  
4-14-04 [20]

WELLS FARGO HOME MORTGAGE, ET AL.

**Final Ruling:** For the convenience of the court, the hearing is continued to Monday, June 7 at 9:00 a.m. All future law and motion in the adversary proceeding will be heard on the court's Monday law and motion self-set calendar.

107. 02-23768-A-13L OTIS JACKSON HEARING - MOTION TO  
04-2041 LJB #1 DISMISS PLAINTIFF'S COMPLAINT FOR  
OTIS JACKSON, VS. FAILURE TO STATE A CLAIM UPON  
WHICH RELIEF CAN BE GRANTED, OR  
WELLS FARGO HOME MORTGAGE, ET AL. ALTERNATIVE, MOTION FOR A MORE  
DEFINITE STATEMENT  
4-23-04 [26]

**Final Ruling:** For the convenience of the court, the hearing is continued to Monday, June 7 at 9:00 a.m. All future law and motion in the adversary proceeding will be heard on the court's Monday law and motion self-set calendar.

108. 04-22968-A-13L PETER/CHRISTINE STRYBOS HEARING - MOTION FOR  
DRW #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGISTRATION SYS., INC., VS. 4-30-04 [15]

**Final Ruling:** The motion will be dismissed without prejudice.

The debtor dismissed the petition on May 11, 2004.

109. 01-24970-A-13L DANA/CHRISTINE SILVIA HEARING - MOTION TO  
WW #7 CONFIRM THIRD MODIFIED  
CHAPTER 13 PLAN  
4-20-04 [73]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

110. 01-24970-A-13L DANA/CHRISTINE SILVIA HEARING - APPLICATION  
WW #8 RE: ADDITIONAL FEES AND  
EXPENSES IN CHAPTER 13 CASE  
(\$2,724.48)  
4-20-04 [76]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved

CONT. HEARING - MOTION TO  
QUASH SUBPOENA  
4-8-04 [40]

**Final Ruling:** The parties have continued the hearing to June 8, 2004 at 9:00 a.m.

HEARING - COUNTER MOTION  
TO COMPEL ATTENDANCE AT  
DEPOSITION AND PRODUCTION OF  
DOCUMENTS AND REQUEST FOR  
REIMBURSEMENT OF EXPENSES  
5-11-04 [54]

**Final Ruling:** The parties have continued the hearing to June 8, 2004 at 9:00 a.m.

HEARING - MOTION TO  
MODIFY PLAN  
4-21-04 [32]

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

CONT. HEARING - MOTION OF  
FORMER CHAPTER 7 TRUSTEE FOR  
APPROVAL OF ADMINISTRATIVE CLAIM  
3-30-04 [77]

**Final Ruling:** Given that there is no confirmed plan, and for the reasons explained in the ruling appended to the minutes of the hearing on April 27, 2004, confirmation of a plan may impact the fees to which the trustee is entitled. Therefore, the court continues the hearing once again. The motion will be considered on June 22, 2004 at 9:00 a.m. Should the case be dismissed prior to June 22, 2004, the chapter 13 trustee shall retain all plan payments until further order of the court.

HEARING - MOTION FOR  
APPROVAL OF ADMINISTRATIVE CLAIM  
BY COUNSEL FOR FORMER  
CHAPTER 7 TRUSTEE  
4-27-04 [90]

**Final Ruling:** Given that there is no confirmed plan, and given the likelihood

of reconversion to chapter 7 if one is not confirmed in the near future, the court continues the hearing to June 22, 2004 at 9:00 a.m. Should the case be dismissed prior to June 22, 2004, the chapter 13 trustee shall retain all plan payments until further order of the court.

116.	02-26377-A-13L ANTHONY TATE AND SAC #7 CARMEN THOMAS	HEARING - FOURTH INTERIM APPLICATION FOR ATTORNEYS' FEES OF SCOTT A. COBEN & ASSOCIATES (\$1,427.53) 4-16-04 [121]
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**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

117.	02-23078-A-13L MAURICE/TRUDY KALISKY SMR #4	HEARING - OBJECTION TO DUPLICATE CLAIM NO. 11 OF SCOTT-NAAKE PAPER CO. 4-5-04 [107]
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**Final Ruling:** This objection to the proof of claim of Scott-Naake Paper Co. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on April 23, 2002. The second proof of claim was filed on May 23, 2002. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

118.	03-24578-A-13L STEPHEN/CONNIE KRUSKAMP CRR #2	HEARING - MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 4-9-04 [51]
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**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

119.	02-31179-A-13L KEVIN/JOY LEWIS	HEARING - MOTION FOR
	JMP #1	RELIEF FROM AUTOMATIC STAY
	CITIFINANCIAL MORTGAGE COMPANY, VS.	4-21-04 [77]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted in part pursuant to 11 U.S.C. § 362(d)(1). The debtor has failed to pay approximately two monthly post-petition installments. The debtor does not deny that this post-petition default has occurred. Instead, the debtor agrees to pay this default within a short period. The debtor has demonstrated to the satisfaction of the court that this cure is likely to be paid. If the debtor has not paid all post-petition arrears, including the May and June installments, by the last day of the grace period for the June installment, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served upon the trustee.

120.	00-25880-A-13L MOMIE ALLEN	HEARING - MOTION TO
	JSO #2	CONFIRM THIRD MODIFIED
		CHAPTER 13 PLAN
		4-2-04 [55]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of the hearing gives inaccurate and insufficient notice of the deadline for opposition. It states that written opposition is due five court days prior to the hearing. Because 28 days or more of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002) is applicable. It requires that written opposition be filed 14 calendar days prior to the hearing. Consequently, parties in interest were told to file written opposition after the deadline for filing it.

121.	00-25880-A-13L MOMIE ALLEN	HEARING - TRUSTEE'S OBJECTION TO
	LJL #4	CLAIM OF LORI J. SCOTT,
		TREASURER/TAX COLLECTOR
		4-6-04 [60]

**Final Ruling:** This objection to the proof of claim of Lorie J. Scott,

The objection will be sustained. The last date to file a timely proof of claim was November 15, 2000. The proof of claim was filed on January 22, 2001. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

**Final Ruling:** This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

**May 24, 2004 at 9:00 a.m.**  
**- Page 56 -**



124. 00-32583-A-13L CLAY/LINDA WILSON  
WW #7

HEARING - APPLICATION  
RE: ADDITIONAL FEES AND  
EXPENSES IN CHAPTER 13 CASE  
(\$4,258.35)  
4-20-04 [133]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

125. 04-20184-A-13L VICKIE ALEXANDER  
SDB #1

HEARING - DEBTOR'S  
MOTION FOR ORDER VALUING  
COLLATERAL OF AMERICREDIT  
4-27-04 [17]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) will be granted. The respondent's collateral had a value of \$18,015 on the date the petition was filed. That date is the effective date of the plan. \$18,015 of its claim is an allowed secured claim. When paid \$18,015 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

126. 04-20184-A-13L VICKIE ALEXANDER  
SDB #2  
VS. CITIFINANCIAL RETAIL SERVICES

HEARING - DEBTOR'S MOTION TO  
AVOID JUDICIAL LIENS THAT  
IMPAIRS EXEMPTION  
4-27-04 [23]

**Final Ruling:** This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

127. 03-26987-A-13L DAVID/BETTYLYNN HIZON HEARING - MOTION FOR  
SML #1 RELIEF FROM AUTOMATIC STAY ETC  
MTG. ELECTR. REGIS. SYS., INC., VS. 4-21-04 [23]

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan, which identifies the movant as Alliance Mortgage, requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four monthly post-petition installments. This is cause to terminate the automatic stay. See *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 434-435 (B.A.P. 9<sup>th</sup> Cir. 1985).

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

The IRS filed a proof of claim on October 23, 2003 for 2002 income taxes. The

trustee's objection notes that payment of this priority claim would mean the plan would not be completed for 64 months in violation of 11 U.S.C. § 1322(d). However, the IRS withdrew its proof of claim on May 17, 2004. Even though the document filed by the IRS indicates that the withdrawn claim was filed on September 11, 2001, the court takes this to be a withdrawal of the October 23, 2003 proof of claim because September 11, 2001 was before the case was filed, and the October 23, 2003 proof of claim is only proof of claim filed by the IRS.

129. 02-25997-A-13L CLINTON/SUSAN WELLS  
JRH #7  
VS. BENEFICIAL CALIFORNIA, INC.

HEARING - MOTION TO  
AVOID LIEN  
4-9-04 [60]

**Final Ruling:** This motion to avoid a nonpossessory, nonpurchase money lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(B). The respondent holds a nonpossessory, nonpurchase money security interest in household furnishings and goods owned by the debtor and used by the debtor's household as such. These items have been exempted by the debtor. There is no non-exempt equity. The fixing of the respondent's security interest and lien impairs the debtor's exemption and the fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

130. 03-28497-A-13L AMADOR ARROYO, III  
W&W #1

HEARING - OBJECTION TO  
CLAIM OF FIRESIDE THRIFT COMPANY  
4-12-04 [19]

**Final Ruling:** This objection to the proof of claim of Fireside Thrift Company has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition deficiency owed in connection with a vehicle loan. Such claims are not entitled to priority status. 11 U.S.C. § 507.

131. 00-32998-A-13L JIMMY/NAWASSHA SMITH  
LJL #6

HEARING - TRUSTEE'S OBJECTION TO  
CLAIM OF HOMEQ SERVICING CORP.  
4-6-04 [84]

**Final Ruling:** This objection to the proof of claim of Homeq Servicing Corporation has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The claimant's default is

The objection will be sustained. The last date to file a timely proof of claim was April 5, 2001. The proof of claim was filed on November 24, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

- Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

- Page 60 -

nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$750 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served upon the trustee.

135. 04-21199-A-13L MELINDA SIMMY  
MWB #1

HEARING - MOTION FOR  
APPROVAL OF ATTORNEYS FEES  
AND COSTS PAYABLE (\$4,192.50  
FEES; \$194.00 COSTS)  
4-21-04 [18]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.